

ROLAND F. AND JACKIE H. MOODY, APPELLANTS
ALEKNAGIK VILLAGE, ALASKA, RESPONDENT

IBLA 82-588

Decided September 16, 1982

Appeal from the decision of the Townsite Trustee, Bureau of Land Management, rejecting an application for deed to townsite lots.

Affirmed.

1. Alaska: Townsites -- Federal Land Policy and Management Act of 1976: Repealers -- Townsites

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right. No right was established where the only "improvement" prior to repeal consisted of clearing an area for site preparation in 1969, which clearing had thereafter revegetated with brush, and there was no other occupancy, use or possession of the land until 1980.

APPEARANCES: George L. Benesch, Esq., Anchorage, Alaska, for appellants; James Vollintine, Esq., Anchorage, Alaska, for respondent.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

By his decision of November 10, 1981, the Alaska Townsite Trustee (an employee of the Bureau of Land Management) rejected the application of Jackie H. Moody and Roland F. Moody for a deed to Lots 7 and 8, Block 8, Tract "A," U.S. Survey 4873, Townsite of Lake Aleknagik, Alaska.

The Moodys (appellants) have appealed from that decision, and the Village of Aleknagik has filed a response in opposition to that appeal.

The record reflects that in 1969 appellants cleared an area of less than an acre as preparation of a building site. Thereafter, appellants did nothing more to improve, use or occupy the land until 1978, by which time the townsite laws (under which they were claiming) had been repealed. By that time the cleared area had become revegetated with brush. In 1978 appellants allege they cleared an area which was to be the site of a well, but no well was ever drilled. In April 1980 appellants dragged a small, frame, skid-mounted structure onto the land. The structure had openings for a door and a window, but no door or window in place.

In 1970 the Village of Aleknagik had installed a community hall on lot 8, and put the city hall on the same lot in 1973.

[1] The townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, section 703(a), 90 Stat. 2789, effective October 21, 1976. No rights can be created by occupancy of townsite lands after that date. George W. Murphy, 48 IBLA 123 (1980); Thomas Taggart, 46 IBLA 350 (1980); Royal Harris, 45 IBLA 87 (1980). ^{1/} Because appellants' clearing of a small area for the intended well site and their placement of the frame structure on the land occurred after repeal of the statute under which they are claiming, those acts cannot serve to create any right to the land. The only cognizable manifestation of use and occupancy under the townsite statute was the clearing of the building site in 1969. We consider this to be insufficient to establish a right to a deed based upon actual settlement and occupancy, particularly in light of the fact that over the ensuing 8 or 9 years nothing else was done, and the clearing was revegetated with brush. In a somewhat similar case, this Board held that where an individual had made no use of a tract of land for 9 years preceeding his filing of a Native allotment application, the right of an intervening claimant who had occupied the tract under the trade and manufacturing site law during that period was superior. United States v. Flynn, 53 IBLA 208, 88 I.D. 373 (1981).

Here, too, the failure of appellants to actually settle and occupy the land over a period of several years left that land open to the initiation of rights by others. However, this opinion is not concerned with the validity of any right asserted by respondent. Our conclusion is limited to holding that appellants are not entitled to a deed by reason of the fact that they were never occupants of the land during the period when they might have established rights thereto under the townsite law.

^{1/} Judge Burski dissented from the Board's decision in Royal Harris, *supra*. He continues to adhere to that dissent. However, unless and until the Board's majority position is overturned, that decision is binding on all Judges. Only for that reason does he concur in the instant decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

